

he practiced under an assumed or fictitious name in the use of the term "Painless Parker Dentist." But, said the court, the name Painless Parker Dentist was not fictitious. Parker was practicing under the name given him by decree of court, which also was the name under which he was licensed to practice by the board.

For the reasons stated above, the order of the California Board of Dental Examiners suspending Parker's license to practice dentistry was reversed.

* * *

Physicians' Witness Fees

The Washington Supreme Court holds, by a divided court, 5 to 4, that a plaintiff in a personal injury action who voluntarily submits to an examination by a doctor at the instance of the defendant may call the doctor as a witness and interrogate him, not only as to the facts which he discovered upon the examination, but also as to his opinion concerning the nature and extent of the injury, without compensation other than the ordinary witness fees. The rule according to the decisive weight of authority, the court says, is that an expert witness is not entitled to demand additional compensation other than the ordinary witness fees, unless special services other than attendance to give testimony on the trial are required in order to enable the witness to testify.

In this case the doctor having testified to the facts which he discovered on the examination of the plaintiff in a deposition, refused to give his opinion as to the nature and extent of the injuries. The court ordered him to give such opinion or be adjudged in contempt of court. The doctor sought to be relieved from the order. The writ was denied. The court said: "We see no reason why the same rule should not apply as to the doctor's opinion as is applied to the facts which were discovered by his examination. The opinion would be based upon the facts disclosed by the examination to which the adverse party to the one employing the doctor voluntarily submitted. This is not a case where the adverse party seeks to call a witness employed by the other party and interrogate him as to matters which require special preparation without the party calling him having in any manner cooperated." . . . The court pointed out that the doctor did not demand witness fees, and that failure to pay or tender them was not the reason given for his refusal to testify. The court therefore did not pursue that question further.

Dissenting opinion by French, J., said in part: "I do not think a physician or other professional man can be called as an expert witness and required to answer purely hypothetical questions involving his opinion only without some arrangements being made as to his special fees." . . . Holcomb, J., specially concurring with the majority opinion, said that if the expert has been unable to reach a conclusion from his examination, he has the privilege of so stating, under his oath, without being deemed in contempt." *State ex rel. Berge v. Superior Court*, 281 Pac. 355.—*Medical Journal and Record*.

* * *

The Law of Libel

The editing of a journal calls for a certain precautionary attitude which few recognize apart from the editor himself. We have had occasion to delete expressions and statements in contributed papers which, even though true, if published, would be liable to cause trouble. It is an expensive and uncertain matter to be called into court even to prove that one is right. In the matter of libel, discretion is the better part of valor. Bresnan, the counsel for the Medical Society for the State of New York, writing in the *New York State Journal of Medicine*, quotes the libel law, which defines libel as, "A malicious publication, by writing, printing, picture, effigy, sign or otherwise than by mere speech, which exposes any living person, or the memory of any person deceased, to hatred, contempt, ridicule or obloquy, or which causes, or tends to cause, any person to be shunned or avoided, or which has a tendency to injure any person, corporation or association of persons, in his or their business or occupation is a libel."

This has been carried so far as to be construed to apply to biographies even of persons long dead, if their descendants felt it worth while to prosecute.

Another matter on which editors must be on their guard is that of violating copyright. If the writer of a paper, for instance, finds it advantageous to make a lengthy quotation, he will do well to write the publisher or author of the article for permission. This is usually granted. However, to quote at length without this permission is violating the law of copyright and one becomes amenable to the penalties of the law should the owner feel it expedient to prosecute. Copyright privileges cover twenty-eight years, so that in quoting from works published beyond this time, mere mention of the source of the material is sufficient. Recent books, however, are very particular in the matter and stipulate that no part of the book may be quoted without the permission of the publisher. With this permission given it is customary to acknowledge it by a brief line to that effect.—*Journal of the Michigan Medical Society*, September, 1932.

STERILIZATION *

Sterilization in the Light of Criminal Law.—The question is being raised more and more frequently as to whether, with reference to birth regulation and the securing of a healthy posterity, in certain cases compulsory sterilization should be applied, or as to whether sterilization by a physician at the request and with the consent of the person to be sterilized is, or should be, permissible under the law. . . .

Supporters of compulsory sterilization call attention to the examples of various North American states in which, for a number of years, sterilization has been permitted, and emphasize that it is certainly to the interest of public welfare and public health that certain persons who are subnormal mentally or physically be prevented by sterilization from having offspring that are most likely to be a burden to society. In support of this, figures are cited. In 1893 there were 834 living descendants of an alcohol addict, a woman born in 1810, of which number 181 were prostitutes, 142 were beggars, 76 were major criminals, and 7 were murderers. Prussia was obliged to spend for this family, by way of prison costs, social aid and the like, the sum of \$1,200,000. . . .

In spite of the arguments cited, Ebermayer does not favor the introduction of compulsory sterilization. It constitutes a drastic negation of the right of self-determination, which the legislator should not consent to, since the effects of sterilization on the character development of the person sterilized, and on the sexual impulse, are by no means fully understood. Furthermore, the "laws" of hereditary transmission are not so fully developed as yet that one can establish with certainty, in every case, whether or not an inferior progeny affected with moral and criminal taints is to be expected. This is also the predominant standpoint of medical science, as Ebermayer has shown in "Der Arzt im Recht."

It is quite another question as to whether or not a physician should be granted the right to perform sterilization in all cases in which the person to be sterilized requests it—or at least if certain preconditions are met. At present such a permission is granted only when there are suitable therapeutic indications for sterilization, which is seldom the case. Under such circumstances the physician, if he sterilizes with the consent of the patient, is not amenable to punishment; but if he acts without, or contrary to, the desire of the patient, he is guilty of a bodily injury punishable by law.

A sterilization for any other than therapeutic reasons—for example, for social or eugenic reasons—a physician may not, according to existing laws, undertake, even though the party immediately affected expressly demands such intervention. In medical circles, however, contrary opinions are frequently advanced,

* See also editorial comments in this issue of California and Western Medicine, page 261.

and sometimes also in legal circles; it is admitted that the physician is punishable if he acts without, or against, the desire of the other party, but it is held that he is not punishable if the other party demands sterilization, or at least consents to it. This opinion is wrong. Sterilization for other than therapeutic purposes is, according to existing German law, an objectively illegal severe bodily injury. The question may be raised as to whether the law should be changed. As to sterilization for eugenic reasons, doubt may be expressed as to whether the "laws" of hereditary transmission are sufficiently developed and understood to enable an examining board to decide with certainty, in a given case, whether or not a sterilization is indicated. On the other hand, an opportunity should be afforded a physician to perform sterilization with impunity if certain preconditions of a social nature obtain and the person to be sterilized makes such a request. For example, it does not appear reasonable to deny a physician the right to sterilize at her request a woman without adequate income who already has seven children that she cannot properly care for; yet, as the law now reads, he is subject to punishment if he complies with her request. The draft of a new general penal code has introduced here a good compromise: it provides that the person committing a bodily injury with the consent of the injured subject is amenable to punishment only in case the act contravenes good morals. If this provision is approved, sterilization with the consent of the person to be sterilized may be performed with impunity in all cases in which it appears reasonable and proper, as, for example, in the case just cited.—*Berlin News Letter in Journal of the American Medical Association*, Vol. 99, No. 5.

TWENTY-FIVE YEARS AGO*

EXCERPTS FROM OUR STATE MEDICAL JOURNAL

Volume V, No. 10, October, 1907

From some editorial notes:

Short Papers.—It is mighty seldom that a man has anything to present to a gathering of medical men which cannot be said in ten, or at most, fifteen minutes. Long, tiresome papers are a burden to the flesh of the listener and are of small profit to him. This is said with the next meeting of the state society in mind and at the suggestion of some members of the Committee on Scientific Work. The reading of endless reports of cases has no place in the program of a learned society. The meat of the paper should be gathered into an abstract which will present the facts, and the tedious details, only useful for reference, comparison or subsequent study, should be published but not read. So, too, with the paper which deals with an elaborate history of some complication, compiled from the already enormous literature on the subject or based upon long quotations from other papers previously read. Such things are entirely out of place at the time of a meeting, though they are occasionally useful for reference. It is to be hoped that the papers at the next meeting of the society will be short, sharp, sweet and to the point, and that the discussions will in the main follow the papers in these highly-to-be-desired characteristics. . . .

General Sanitation.—The discussion by the San Francisco County Medical Society, at a recent meeting, of the plague situation in that city points out most markedly the general lack of interest in or attention to the simplest sanitary measures, not alone on the part of the general public, but also by our profession. . . . True, we have now a Pure Food Commission of the State Society, and we understand that it is doing splendid work, but that is only a part of the work that

should be done everywhere. Each and every county medical society should be the real sanitary commission for that county, if not indeed the actual County Board of Health; and it should command the respect and support of the citizens of the county. . . .

Direct Illustration.—The plague in San Francisco is another illustration. The city and the national governments are spending many thousands of dollars each month in an effort to counteract the negligence of past years. A modest sum intelligently expended by an honest and nonpolitical Board of Health continuously would keep the city clean and render it almost immune to infection. Fortunately for the whole state, and indeed for the country, the Marine Hospital Service and an honest and intelligent Board of Health are now working together and have a firm grasp of the situation; there is no danger of a plague epidemic, though there will undoubtedly be cases reported for a number of months to come. That is all right so far as San Francisco is concerned, but what of other sections in the state? . . .

How to Do It.— . . . Therefore, it is vitally necessary, if we are to fulfill our obligations to the public, that we manifest our existence by getting interested in politics so far as educating the voters on these matters may be concerned. . . . Experience has shown that legislators are most anxious to learn and most ready to listen to advice before they are nominated or elected. It is, perhaps, not so singular that this should be so; but it is so, nevertheless. Therefore, before the aspirant is nominated, or before he is elected, it is well to talk with him about these matters of public health and show him what they mean to his community. . . . You know now at least some one or more men who will probably aspire to nomination for the next legislature. . . .

From an article on "Surgical Treatment of Gastropsis" by J. Henry Barbat, M.D., San Francisco.

The first recorded operative procedure for the cure of gastropsis was by Duret of Lille in 1894. The operation consisted in sewing the stomach to the anterior abdominal wall, and was done for an extreme case of gastropsis. . . .

CALIFORNIA STATE DEPARTMENT OF PUBLIC HEALTH

By GILES S. PORTER, M. D.

Director

City and County Health Officers of California, by Counties—

ALAMEDA COUNTY.....	Dr. John A. Azevedo, Hayward
Alameda.....	Dr. R. W. Sanders
Albany.....	Dr. Martin J. Lacey
Berkeley.....	Dr. Frank L. Kelly
Emeryville.....	Dr. George Rothganger
Hayward.....	Nelson E. Clemens, D. V. M.
Livermore.....	Dr. Paul E. Dolan
Oakland.....	Dr. Arthur Hieronymus
Piedmont.....	Dr. Harry J. Smith
Pleasanton.....	Dr. J. Hal Cope
San Leandro.....	Dr. Luther Michael
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Williams.....	Dr. Charles F. Keith
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Antioch.....	Dr. J. B. Blackshaw
Concord.....	Under County Supervision
El Cerrito.....	Dr. F. L. Horne
Hercules.....	Under County Supervision

* This column strives to mirror the work and aims of colleagues who bore the brunt of state society work some twenty-five years ago. It is hoped that such presentation will be of interest to both old and recent members.